

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

PETER KIEWIT SONS', INC.,

Plaintiff,

vs.

WALL STREET EQUITY GROUP,
INC., ET AL.,

Defendants.

8:10-CV-365

ORDER

Defendant Steven S. West has filed an "emergency motion for reconsideration" (filing [410](#)) of the Court's denial of his oral motion to continue (filing [408](#)). For the reasons stated in the Court's order of October 9, 2013 (filing [409](#)), West's motion for reconsideration will be denied.

Two points merit some additional explanation. One is that now, West has specifically asked for only a 30-60 day continuance, based on his "estimate" of how long it will take his condition to improve. He asserts there was a "downturn" in his condition in August but "one could assume there will be an upturn in the near future." Filing [410](#). The Court is unwilling to make that assumption absent persuasive evidence, which West has not provided. West's personal estimate of when he feels he might be ready for trial is not sufficient reason to further delay resolution of the plaintiff's claims.¹

Second, West claims that he has not delayed the trial: that it has taken 3 years "[d]ue to the complexity of this matter" and that he has never requested a delay. Filing [410](#). Those contentions are contradicted by the record. Trial of this case was originally set for October 4, 2011, but was postponed because of difficulties in establishing the defendants' availability for depositions. See filings [38](#), [51](#), and [59](#). It was delayed again, until June 5, 2012, on the *joint* motion of the parties (including, obviously, the defendants).² See filings [85](#) and [132](#). But that trial date was canceled after an

¹ This is particularly the case given well-founded concerns, based on West's previous conduct, about his credibility. See filing [263](#).

² It is well established that a party is responsible for the actions and conduct of his or her counsel. See, e.g., *Link v. Wabash R.R.*, 370 U.S. 626, 633-34 (1962), *Wescott Agri-Products, Inc. v. Sterling State Bank, Inc.*, 682 F.3d 1091, 1096 (8th Cir. 2012), *Everyday Learning Corp. v. Larson*, 242 F.3d 815, 817 (8th Cir. 2001), *Rodgers v. Curators of the Univ. of Mo.*,

in-court hearing on the defendants' conduct in resisting the plaintiff's discovery. See filings 221 and 244. When the trial date was reset for April 2, 2013, the final case progression schedule was based in large measure on West's contumacious and deceitful conduct during the discovery process. See filings 263 and 290. The trial was delayed again by a suggestion of bankruptcy filed by a corporate defendant. See filing 331. Finally, the Court arrived at the present trial date, over 3 years since the complaint was filed.

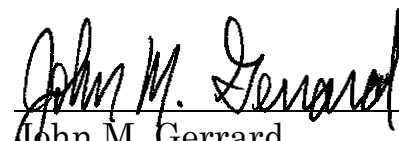
Given the history of these proceedings, West cannot disclaim responsibility for their delay. He sought delay through counsel, and he made further delay inevitable by frustrating the plaintiff's attempts at discovery through destruction of evidence and false testimony. He is already more than partially responsible for unreasonably delaying the resolution of this case, and the Court is not persuaded by this last-minute attempt to further postpone the plaintiff's prosecution of its claims. West's motion for reconsideration will be denied, and the **trial of this case will proceed at 9:00 a.m. on October 11, 2013, in Courtroom 3, Roman L. Hruska Federal Courthouse, 111 South 18th Plaza, Omaha, Nebraska.**

IT IS ORDERED:

1. West's motion for reconsideration (filing 410) is denied.
2. The Clerk of the Court is directed to e-mail copies of this order and the Court's order of October 9, 2013 (filing 409) to each of the non-corporate defendants, and to fax them to West's fax number at (954) 582-5090.³

Dated this 10th day of October, 2013.

BY THE COURT:



John M. Gerrard
United States District Judge

135 F.3d 1216, 1220 (8th Cir. 1998), *Inman v. Am. Home Furniture Placement, Inc.*, 120 F.3d 117, 118 (8th Cir. 1997), *Comiskey v. JFTJ Corp.*, 989 F.2d 1007, 1010 (8th Cir. 1993).

³ The e-mail address of record for Steven West is tp@wseag.com, and the e-mail address for Shepherd Friedman is shepfriedman@gmail.com. The Court notes, for the record, that West's motion for reconsideration (filing 410) was received by e-mail to chambers from tp@wseag.com, and by fax to the clerk's office from (954) 582-5090.